

DA 19-0084

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 240N

DARRELL DEAN SHARP,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Toole, Cause Nos. DC 09-010 and DC 09-032
Honorable Robert G. Olson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Darrell D. Sharp, Self-represented, Deer Lodge, Montana

For Appellee:

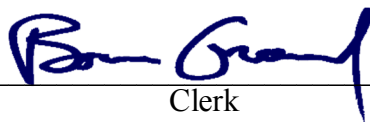
Timothy C. Fox, Montana Attorney General, Damon Martin, Assistant
Attorney General, Helena, Montana

Merle Raph, Toole County Attorney, Shelby, Montana

Submitted on Briefs: September 11, 2019

Decided: October 8, 2019

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Petitioner and Appellant Darrell Dean Sharp (Sharp) appeals the Order Denying Motion to Reconsider Petition for Post-Conviction Relief issued by the Ninth Judicial District Court, Toole County, on December 12, 2018. We affirm because Sharp's petition is both untimely and procedurally barred.

¶3 On June 18, 2009, Sharp was charged by Information in cause number DC-09-010 with five felony counts stemming from an incident in which he attacked his estranged wife, Melany Shulman, and another man, Torval Jay Halvorson, at Halvorson's home, injuring both of them and causing property damage. The State later moved to amend the Information, and Sharp was ultimately charged by Amended Information on September 3, 2009, with six felony counts: Kidnapping, Aggravated Assault, Aggravated Burglary, Assault on a Minor Child, Assault with a Weapon, and Criminal Endangerment. While being held in the Toole County detention facility on these charges, Sharp struck and bit a Toole County Sheriff's Deputy. For this incident, Sharp was charged in cause number DC-09-032 with a single felony count of Assault on a Peace Officer or Judicial Officer.

¶4 On June 1, 2010, Sharp and the State filed a signed Plea Agreement, along with a signed Acknowledgement of Waiver of Rights by Plea of Guilty. The terms of the Plea Agreement called for Sharp to plead guilty to Aggravated Assault and Criminal Endangerment in DC-09-010 and Assault on a Peace Officer or Judicial Officer in DC-09-032, in exchange for the State dismissing the remaining charges in DC-09-010. The Plea Agreement stated that the Defendant would concur with the recommendations made by the State, and that the State would recommend a sentence of 20 years at the Montana State Prison (MSP), with 10 suspended for Aggravated Assault; 10 years at MSP, with five suspended for Criminal Endangerment; and 10 years at MSP, with five suspended for Assault on a Peace Officer or Judicial Officer. The Plea Agreement called for each of these sentences to run consecutively, for a total of 40 years at MSP, with 20 suspended. The Plea Agreement further called for a 10-year parole eligibility restriction from the date of sentencing.

¶5 The District Court held a change of plea hearing on June 1, 2010, where Sharp pled guilty to Aggravated Assault, Criminal Endangerment, and Assault on a Peace Officer or Judicial Officer. On August 12, 2010, the District Court held a sentencing hearing, where it sentenced Sharp in accordance with the Plea Agreement to a total of 40 years at MSP, with 20 suspended, along with a 10-year parole eligibility restriction. The District Court entered its written judgment reflecting this sentence on August 27, 2010. Sharp did not appeal, but later filed a petition for postconviction relief, a motion to withdraw his guilty plea, and an application for sentence review. The District Court denied Sharp's petition

for postconviction relief on February 14, 2011, and denied his motion to withdraw his guilty plea on February 15, 2011. Sharp did not appeal either order. The Sentence Review Division unanimously upheld Sharp's sentence in a written decision on May 31, 2011.

¶6 Since his sentencing, Sharp has filed numerous pleadings before the District Court, this Court, and in federal court, seeking to have his conviction overturned. On October 1, 2018, Sharp filed a Petition for Postconviction Relief, alleging that his plea was induced by threat of a persistent felony offender (PFO) designation, ineffective assistance of counsel, and actual innocence. On October 30, 2018, the District Court issued an order denying Sharp's petition as untimely. On November 7, 2018, Sharp filed a "Notice of Appeal & Motion to Reconsider" the District Court's denial of his petition. On December 12, 2018, the District Court issued its Order Denying Motion to Reconsider Petition for Post-Conviction Relief, which again found Sharp's petition to be untimely and also addressed Sharp's claim of newly discovered evidence, finding that Sharp presented no facts in the petition demonstrating that he did not engage in the criminal conduct for which he pled guilty.

¶7 Section 46-21-102, MCA, addresses the timeliness of postconviction petitions:

(1) Except as provided in subsection (2), a petition for the relief referred to in 46-21-101 may be filed at any time within 1 year of the date that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

- (a) the time for appeal to the Montana supreme court expires;
- (b) if an appeal is taken to the Montana supreme court, the time for petitioning the United States supreme court for review expires; or
- (c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(2) A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted, may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later.

¶8 The State argues that Sharp’s petition, filed in 2018, is untimely. After pleading guilty pursuant to the plea agreement, Sharp was sentenced on August 12, 2010. The District Court entered its written judgment on August 27, 2010. Because Sharp did not appeal, his conviction became final when the time for appeal to this Court expired. Section 46-21-102(1)(a), MCA. An appeal must be taken within sixty days of entry of final judgment in a criminal case. M. R. App. P. 4(5)(b)(i). Therefore, Sharp’s conviction became final on October 26, 2010. Sharp’s October 1, 2018, petition was filed nearly eight years after his conviction became final and is untimely pursuant to § 46-21-102(1), MCA.

¶9 Sharp’s 2018 petition for postconviction relief contains a claim of “newly discovered evidence,” and therefore we must address whether the petition alleges “newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted[.]” Section 46-21-102(2), MCA. If the petition meets this standard, it may still be considered timely if it is filed within one year of “the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence[.]” Section 46-21-102(2), MCA. The District Court reviewed Sharp’s claim of newly discovered

evidence and found that Sharp offered no facts in the Petition to show that he did not engage in the criminal conduct for which he voluntarily entered a plea of guilty. We have reviewed the petition and agree with the District Court. Sharp's petition alleges that his "newly discovered evidence" is that his plea was induced by the threat of PFO. Sharp has complained about this issue since his first postconviction petition in 2010 and offers no evidence that he did not engage in the criminal conduct to which he pled guilty. Sharp's 2018 petition for postconviction relief is therefore also untimely pursuant to § 46-21-102(2), MCA.

¶10 Under § 46-21-105(1)(b), MCA, "[t]he court shall dismiss a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises grounds for relief that could not reasonably have been raised in the original or an amended original petition." Sharp filed his first postconviction petition on December 30, 2010. The District Court issued an order denying Sharp's first postconviction petition on February 14, 2011. Sharp did not appeal the District Court's denial of his original petition. Sharp later wrote a letter to the District Court on March 6, 2015, stating that he was submitting "this motion for post-conviction." The letter then raised, in relevant part, claims of newly discovered evidence, ineffective assistance of counsel, and improper use of PFO to induce his guilty plea. The District Court construed Sharp's "motion for post-conviction" as a petition for postconviction relief and denied it as untimely on March 23, 2015. Sharp did not appeal the denial of his 2015 petition. Sharp's current petition for postconviction relief does not raise any grounds for relief that could not have

been raised in his original 2010 or subsequent 2015 petitions. In addition to being untimely, Sharp's 2018 petition for postconviction relief is procedurally barred as a second or subsequent petition under § 46-21-105(1)(b), MCA.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶12 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR